CITY COUNCIL MEETING MARCH 8, 1988

RECONSIDERATION
OF APPROVAL OF
ACREMEN? WITH
GREAT WESTERN
SAVINGS AMD
LOAN ASSOCIATION
DEFERRED COMPENSATION PROGRAM

cc-5

Due to certain time constraints regarding the proposed agreement with Great Western Savings and Loan Association, to serve as the City's Administrator for the City of todi Deferred Compensation Program, Staff requested that Council reconsider the matter suggesting that the Agreement be approved with the condition that the following wording be deleted from Section 2 entitled "TERMINATION" --- "other than for cause as defined above".

On motion of Mayor Pro Tempore Snider, Reid second, Council agreed to reconsider the subject matter.

Following discussion with questions being directed to Staff, Council, on motion of Mayor Pro Tempore Snider, Hinchman second, approved the agreement with Great Western Savings and Loan Association to serve as the City's administrator for the City of todi Deferred Compensation Program conditioned upon the deletion of the wording "other than for cause as defined above" from Section 2 entitled "TERMINATION" and authorized the Mayor and City Clerk to execute the subject agreement on behalf of the City.

CITY COUNCIL MEETING MARCH 8, 1988

AGREEMENT WITH
GREAT WESTERN
SAVINGS AND LOAN
ASSOCIATION TO
SERVE AS THE CITY'S
ADMINISTRATOR FOR
THE CITY'S DEFERRED
COMPENSATION

CC-5

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An agreement with Great Western Savings and Loan Association, whereby it would serve as the City's Administrator for the City of Lodi Deferred Compensation Program, was presented for Council approval.

Discussion followed with concern being expressed regarding certain language contained within the proposed agreement.

^ motion made by Council Member Pinkerton, Hinchman second, to approve the agreement, failed to pass by the following vote:

Ayes:

Council Members - Pinkerton

Noes:

Council Members - Hinchman, Reid, Snider

and Olson (Mayor)

The City Manager was directed to place this matter on the Agenda for the regular City Council meeting of March 16, 1988.

DEFERRED COMPENSATION FLAN AGREEMENT

This Agreement is effective this 31st day of March, 1988 by and between GREAT WESTERN RANK, a Federal Savings Bank, hereinafter referred to as GREAT WESTERN, and CITY OF LODI, hereinafter referred to as AGENCY.

WHEREAS, AGENCY, pursuant to and in compliance with Internal Revenue Code Section 457, has established a Deferred Compensation Plan, hereinafter referred to as PIAN; and

WHEREAS, AGENCY desires to utilize GREAT WESTERN in the performance of certain services in connection with the administration of the PIAN; and

WHEREAS, GREAT WESTERN desires to provide such services subject to the terms and conditions set forth herein;

Now therefore, AGENCY and GREAT WESTERN agree as follows:

- 1. TERM: This Agreement shall remain in effect for a period of three (3) years from the effective date hereof, and shall not be terminated prior to that time except for "Cause" as that term is hereinafter defined. Thereafter, this Agreement shall continue in effect for succesive three (3) year periods unless either party gives written notice to the other, not less than ninety (90) days prior to the end of any term, of its intention to renew the Agreement. For purposes of this Agreement, the term "Cause" shall mean the failure of either party to perform any or all of its obligations as defined herein. The non-defaulting party shall give the defaulting party written notice which shall specify the particulars of the default. If such default is not cured within sixty (60) days from the end of the month in which notice of default is given, the non-defaulting party may terminate the Agreement effective thirty (30) days after the end of the sixty (60) day period.
- 2. TERMINATION: Upon the effective date of termination of this Agreement, other than for Cause as defined above, the following shall occur:
 - a. No new account will be established under this Agreement.
 - b. If applicable, mutual fund shares shall be disbursed as mutually agreed in writing by AGENCY and GREAT WESTERN.
 - c. If applicable, annuity products shall be disbursed according to the terms of the applicable annuity contract, as mutually agreed in writing by AGENCY and annuity provider.

This section shall not serve to affect normal distributions to participants pursuant to the PIAN.

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3. DEFERRALS: The minimum participant deferral per pay period shall be not less than \$10.00.

AGENCY agrees to:

- a. Cause appropriate deductions to be made from such payroll(s) as may be applicable.
- b. Send by check or wire transfer the amount of the total deductions to:

Great Western Bank Deferred Compensation Department P.O. Box 6350 Northridge, California 91328

or to such other facility or in such other manner as may be mutually agreed upon between GREAT WESTERN and AGENCY.

- c. Provide, in such form as agreed upon by AGENCY and GREAT WESTERN, a deferral listing with respect to participant sub-accounts to include not less than the following:
 - 1. Name of Participant
 - 2. Social Security Number of participant
 - 3. Amount to be credited to participant's sub-account(s).

GREAT WESTERN agrees to:

- d. Establish a sub-account for each participant.
- e. Credit the amounts sent by AGENCY to the sub-account(s) of the various participants and to selected investment vehicles in accordance with the latest written instructions on file with GREAT WESTERN.
- f. Funds invested in the option described herein as "GWSIA" will accrue interest as of the date of receipt by GREAT WESIERN.
- g. Place mutual fund orders, if applicable, within three (3) business days of the receipt of both, a deferral listing and check, in accordance with the latest written instructions on file with GREAT WESTERN.
- 4. RECORD KEEPING AND REPORTS: GREAT WESTERN agrees to furnish AGENCY, no later than twenty (20) days following the end of each month and each quarter a report regarding the status of the PLAN containing the following information:
 - a. Fach participant's name.
 - b. Each participant's Social Security Number
 - c. Each participant's sub-account number.

- d. Deposit credited to each sub-account during the period.
- e. Withdrawals from each sub-account during the period.
- f. Interest/Earnings credited to each sub-account during the period.
- Summary totals of the PIAN.

NOTE:

Annuity transactions will not appear on the monthly/quarterly reports and quarterly statements issued by Great Western. The Agency and participants will receive quarterly reports and statements from the insurance company.

CREAT WESTERN agrees to provide quarterly statements to participants in the PIAN, no later than twenty (20) days following the end of each calendar quarter. Each statement shall identify the transactions which have occurred in the participant's sub-account at the beginning and the end of the preceding quarter.

GREAT WESTERN agrees to maintain the records necessary to produce the above mentioned reports, and agrees that all records shall be the property of AGENCY and that, in the event this Agreement is terminated for any reason, GREAT WESTERN will provide AGENCY a copy of such records, in hard copy or such other form as mutually agreed upon between GREAT WESTERN and AGENCY, within ninety (90) days after the effective date of termination. AGENCY agrees that all related computer tapes, discs and programs shall remain the property of GREAT WESTERN.

CREAT WESTERN agrees that all information supplied to and all work processed or completed by CREAT WESTERN shall be held to be confidential and will not be disclosed to anyone other than AGENCY except as required by law.

5. DISTRIBUTIONS: Upon receipt of authorized written instructions from ACENCY, in such form and with such authorization as mutually agreed upon by GREAT WESTERN and AGENCY, GREAT WESTERN agrees to process the payment of benefits to participants and beneficiaries in accordance with PIAN. Distributions shall be made once a month, on the seventh (7th) calendar day before the last day of the month. If that day is a Saturday, Sunday or Holiday, distributions shall be made on the next business day. Initial distribution requests received by GREAT WESTERN, at its operations office in Northridge, on and after the sixteenth (16th) calendar day of a month will be processed the following month. If applicable, the distribution of funds resulting from the liquidation of mutual fund shares will be made on the next distribution date which falls at least five (5) business days after the receipt of such funds by GREAT WESTERN. notwithstanding, GREAT WESTERN will cooperate with AGENCY to not unreasonably delay distribution requests in conjunction with "emergency withdrawals", as defined in the PIAN.

CREAT WESTERN agrees to withhold appropriate Federal and State income taxes, according to instructions set forth on form W-4 completed by the participant, to remit such with-holdings to proper taxing authorities, and to issue net funds to participant(s) or beneficiary(ies) in accordance with instructions on the Distribution Request Form. GREAT WESTERN agrees

to perform required monthly, quarterly and annual reporting of withholdings to appropriate taxing authorities. GREAT WESTERN agrees to issue appropriate annual wage and tax statements to those participants and beneficiaries who received distribution(s) during the preceding year and to retain a copy of such information on file for the period required by law. GREAT WESTERN agrees to provide AGENCY a monthly report of all disbursements made during the previous month.

- 6. INVESTMENT VEHICLES: GREAT WESTERN agrees to provide the herein described services for AGENCY with the following investment vehicles.
 - A. Great Western Savings Indexed Account ("GWSIA").

The investment vehicle identified 23 GWSIA shall be savings accounts with GREAT WESTERN. Each such account shall be subject to rules, regulations and statutes to which GREAT WESTERN is subject, as promulgated by the Federal Home Loan Bank Board (FHLBB), the Federal Savings and Loan Insurance Corporation (FSLIC) and other such regulatory authorities.

CREAT WESTERN agrees to accept PIAN funds for investment in GWSIA, such funds to earn interest as follows:

- (1) The rate of interest for all funds received during the first Contract Year, as defined below shall yield the highest of:
 - a. Yield 9.627% (Rate 9.10%)
 - b. The over-the-counter yield quotation for the five year United States Government Treasury Note, as set forth on the day before the last business day of each calendar quarter. This yield will be guaranteed for the succeeding calendar quarter regardless of any subsequent change in the five year United States Treasury Note yield.
 - c. Such other yield declared by Great Western, not less than (1)a or (1)b.
- (2) The rate of interest for all funds for Contract Years subsequent to the first Contract Year shall yield the higher of:
 - a. 'The over-the-counter yield quotation for the five year United States Treasury Note, as set forth on the day before the last business day of each calendar quarter. This yield will be guaranteed for the succeeding calendar quarter, regardless of any subsequent change in the five year United States Treasury Note yield.
 - b. Such other yield declared by Great Western not less than (2)a.

For purposes of this Agreement, "Contract Year" shall mean the period of time between the effective date of the Contract, and the same day of the month in each succeeding year; the first Contract Year, however, shall be extended, if necessary in order to ensure that every Contract Year will end on the last day of a calendar month.

(3) Interest will accrue daily, using the 365/360 day method, will be credited monthly, on the last day of the month, and will be automatically reinvested to allow for monthly compounding.

GREAT WESTERN agrees to collateralize any amount of PIAN funds invested in GWSIA in excess of Federal Savings and Loan Insurance Corporation insurance limits per participant, with first deeds of trust on commercial, industrial or residential property. The unpaid outstanding principal balance of the collateral shall be adjusted monthly, and shall in the aggregate, at all times equal or exceed 150 percent of the amount of such funds in excess of FSLIC insurance limits.

- B. Other investment vehicles which will be provided to the PIAN are described on the attached Schedule 1.
 - (1) If applicable, PIAN funds invested in mutual fund options will utilize Great Western Financial Securities Corporation, a wholly owned subsidiary of Great Western Financial Corporation, as the Broker/Dealer for such transactions.
 - (2) If applicable, Single Premium Immediate Annuities and other annuity products purchased by AGENCY pursuant to PIAN will be issued and guaranteed by John Alden Life Insurance Company, a wholly owned subsidiary of Great Western Financial Corporation, or such other life insurance company selected by Great Western.
 - (3) Certain investment vehicles may impose sales charges. These sales charges will be disclosed in the prospectus or insurance contract, whichever is applicable.
 - (4) GREAT WESTERN may, from time to time, offer to perform the herein described services for additional and/or alternate investment vehicles upon written agreement between GREAT WESTERN and AGENCY.
- 7. ENROLLMENT SERVICES: GREAT WESTERN agrees to process, or arrange to have processed, the enrollment of eligible employees who elect to participate in the PIAN. GREAT WESTERN agrees to provide informational and promotional material pursuant to the PIAN for distribution to employees of AGENCY, subject to approval of such material by AGENCY, such approval not to be unreasonably withheld. AGENCY agrees to allow and facilitate the periodic distribution of such material to employees.

GREAT WESTERN agrees to conduct, or arrange to have conducted, group presentations periodically for employees of AGENCY, to explain the PIAN. AGENCY agrees to facilitate the scheduling of such presentations and to provide facilities at which satisfactory attendance can be expected. GREAT WESTERN agrees that qualified personnel will be made available periodically to discuss the PIAN with individual employees of AGENCY.

- 8. TITLE AND CWINERSHIP: AGENCY shall at all times be the unrestricted owner of all PIAN assets, in accordance with IRC 457 provisions.
- 9. PRIVITY OF CONTRACT: GREAT WESTERN shall have no privity of contract with FLAN participants. GREAT WESTERN agrees not to accept or honor instructions which may be submitted by participants without written authorization from AGENCY.
- 10. FEES AND EXPENSES: GREAT WESTERN, in consideration of its services under the Plan, shall receive an annual administration fee of twelve dollars (\$12.00) per participant in the Plan. GREAT WESTERN will deduct the administration fee from each Participant sub-account in four equal installments of three dollars (\$3.00) at the end of each calendar quarter. GREAT WESTERN requires each Participant to maintain a cash balance in the GWSIA sufficient to cover administration fees.

Other than at the termination of the Agreement, if a Participant transfers their account, or any portion thereof, from GREAT WESTERN to another provider, other than GREAT WESTERN or a subsidiary of Great Western Financial Corporation, a transfer fee in the amount of twenty-five dollars (\$25.00) will be assessed. Such fee to be deducted from the Participant's account prior to transfer of funds.

Should a participant invest in a "no-load" mutual fund, a fee of one dollar (\$1.00) per transaction will be assessed.

11. TRANSFERS:

From the GWSIA To Other Great Western Investment Options

GREAT WESTERN will allow the transfer of funds in participant sub-accounts from the GWSIA to other investment options provided in the plan Agreement.

Such transfer will be allowed only upon express written agreement between AGENCY, GREAT WESTERN and the applicable investment option and will be allowed throughout the term of this Agreement. Funds will be transferred from the GWSIA to the other investment option, within three (3) business days of receipt of written authorization from the AGENCY by GREAT WESTERN at its office in Northridge, California.

b. From Other Great Western Investment Options to GWSIA

GREAT WESTERN will allow the transfer of funds in participant sub-accounts from other GREAT WESTERN investment options provided in the plan Agreement, (i.e. mutual funds and annuities) to the CWSIA. Such transfers will be allowed only upon express written agreement between AGENCY, GREAT WESTERN and the applicable investment option and will be allowed throughout the term of this Agreement. The transfer will be initiated within two (2) business days of receipt of written authorization from the AGENCY by GREAT WESTERN at its office in Northridge, California. If a transfer involves the liquidation of mutual fund shares, the proceeds from the sale of said mutual fund shares, will be credited to the GWSIA upon receipt of the funds by GREAT WESTERN from the investment company.

c. From Great Western to Other Investment Providers

GREAT WESTERN will allow the transfer of funds in participant sub-accounts to other investment providers. Such transfers will be allowed only upon express written agreement between AGENCY and GREAT WESTERN and will be allowed throughout the term of this Agreement.

Transfers will be processed in accordance with the provisions of number 10. (Fees and Expenses) and 11.a. and or b.

- 12. CIRCUMSTANCES EXCUSING PERFORMANCE: The performance by the parties to this Agreement is subject to force majeure and is excused by fires, power failures, strikes, acts of God, restrictions imposed by government, or delays beyond the delayed party's control. Failures of or defaults by investment vehicles other than GREAT WESTERN shall excuse performance by GREAT WESTERN thereby prevented.
- 13. INDEMNIFICATION: Notwithstanding any other provision herein to the contrary, GREAT WESTERN agrees to be solely responsible to AGENCY for any and all services performed by GREAT WESTERN or its employees under this Agreement. GREAT WESTERN shall be responsible for any error or negligence committed by GREAT WESTERN or its employees. AGENCY shall be responsible for any error or negligence committed by AGENCY or its employees. GREAT WESTERN shall not be liable for investment performance, except as expressly provided for in this Agreement
- 14. ASSIGNABILITY: No party to this Agreement shall assign the same without the express written consent of the other party, such consent not to be unreasonably withheld. Unless agreed to by the parties, no such assignment shall relieve any party to this Agreement of any duties or responsibilities herein.
- 15. PARTIES ECUND: This Agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.

- 16. APPLICABLE LAW: This Agreement shall be construed in accordance with the laws operating within the State of California.
- 17. UNLAWFUL PROVISIONS: In the event any provisions of this Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Agreement, but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein. Notwithstanding anything contained herein to the contrary, no party to this Agreement will be required to perform or render any services hereunder, the performance or rendition of which would be in violation of any laws relating thereto.
- 18. MODIFICATION: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedures Section 1856 or its successor(s). No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 19. NOTICES: All notices and demand to be given under this Agreement by one party to another shall be given by certified or United States mail, addressed to the party to be notified or upon whom a demand is being made, at the respective addresses set forth in this Agreement or such other place as either party may, from time to time, designate in writing to the other party. Notice shall be deemed to be effective on the day the notice is received by CREAT WESTERN or the Agency.

If to GREAT WESTERN

GREAT WESTERN BANK

Deferred Compensation Department

P.O. Box 6350

Northridge, California 91328

If to AGENCY

CITY OF LODI
221 W. Pine Street
Lodi, CA 95240
Mr. Jerry Glenn
Assistant City Manager
Chairman Deferred Compensation

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the date first above written.

AGENCY	GREAT WESTERN	
BY TREASURER:		
	BA:	
DATE SIGNED:	DATE SIGNED:	

A contract to the second

SCHEDULE 1

Pursuant to Section 6 of this Agreement, other investment vehicles available under this Agreement are as follows:

American Fund

Bond Fund of America

Investment Company of America

Growth Fund of America

Fidelity Funds

Short-Term Bond Portfolio

Flexible Bond Funds

Mortgage Securities Fund

Convertible Securities Fund

Freedom fund

High Income Fund

Twentieth Century
Select Fund